

HOUSE BILL REPORT

ESHB 2925

As Amended by the Senate

Title: An act relating to impact payments of a municipally owned hydroelectric facility.

Brief Description: Concerning impact payments of a municipally owned hydroelectric facility.

Sponsors: House Committee on Ways & Means (originally sponsored by Representatives Kretz, Short and Condotta).

Brief History:

Committee Activity:

Local Government & Housing: 1/28/10, 2/1/10 [DP];

Ways & Means: 2/6/10, 2/8/10 [DPS].

Floor Activity:

Passed House: 2/16/10, 93-5.

Senate Amended.

Passed Senate: 3/5/10, 48-0.

Brief Summary of Engrossed Substitute Bill

- Requires a city with a population exceeding 500,000, or its municipal utility, that has hydroelectric or other electricity generating projects located in another county, to provide financial compensation for negative impacts upon county revenues and the public welfare resulting from such generating facilities or projects.
- Requires continued compensation payments in the event the compensation contract/agreement expires and provides for the payment of arrearages.
- Requires arbitration in the event the county and the city, or its municipal utility, are unable to reach a new compensation agreement following the expiration of a previous contract or agreement.

HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

Majority Report: Do pass. Signed by 7 members: Representatives Simpson, Chair; Angel, Ranking Minority Member; Fagan, Miloscia, Short, Upthegrove and Williams.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 3 members: Representatives Nelson, Vice Chair; Springer and White.

Staff: Thamas Osborn (786-7129).

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 22 members: Representatives Linville, Chair; Ericks, Vice Chair; Sullivan, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Cody, Conway, Darneille, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew, Priest, Ross, Schmick and Seaquist.

Staff: Alex MacBain (786-7288).

Background:

A city that owns and operates a public utility with electricity generating facilities located in another county *may* provide financial assistance to that county to compensate for the financial and social impacts of such facility on the affected community. The city and county are authorized to enter into contracts for the provision of such compensation.

After March 17, 1955, if a city either constructs hydroelectric facilities or acquires land for that purpose in another county and the hydroelectric project has impacts that negatively affect county revenues, transportation, public welfare, or local school districts, then the city must enter into a financial compensation agreement with the county and/or the affected school districts.

Summary of Engrossed Substitute Bill:

A city with a population greater than 500,000 that owns and operates a public utility with electricity generating facilities in another county must provide financial compensation to that county, the municipalities within that county, and local school districts, so as to compensate for the impacts of the generating facility that negatively affect local revenues, public welfare, and/or the school districts. The financial compensation must be provided pursuant to a contract between the city owning the hydroelectric facilities and the affected county.

After March 17, 1955, a municipal utility located in a city with a population exceeding 500,000 and that has hydroelectric facilities located in another county, or that acquires land in another county for the development of such facilities, must provide financial compensation to the affected county. The compensation must be paid annually pursuant to an agreement between the municipal utility and the county.

When a compensation contract or agreement required under the act expires, the city or its municipal utility must continue to compensate the county under the terms of the expired contract/agreement until a new contract/agreement is executed. For contracts/agreements that have expired prior to the effective date of the act and a new contract/agreement has not

been executed, the city must compensate the county or counties under the terms of the expired contract/agreement from the time of the expiration until a new contract is executed.

In the event the compensation contract/agreement expired prior to the effective date of the act, the city or its municipal utility is indebted to the county for any resulting arrearage accruing from the time of the expiration of the contract/agreement until such time as a new contract/agreement is executed by the parties. The dollar amount of such arrearage is calculated retroactively by reference to the payment terms set forth in the most recent expired compensation contract/agreement between the city or its municipal utility and the county.

In the event the compensation contract/agreement expires, or has expired prior to the effective date of the act, and the parties are unable to reach agreement within six months of such expiration, then the parties must follow specified arbitration procedures. The city and/or its municipal utility are responsible for all arbitration costs.

EFFECT OF SENATE AMENDMENT(S):

Adds additional arbitration provisions that: (1) Authorize either the city or the county to initiate arbitration proceedings by serving written notice on the other of its intent to seek arbitration; and (2) establishes that the city and the county shall be responsible for their own attorney's fees and litigation costs related to arbitration.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony (Local Government & Housing):

(In support) Hydroelectric and other electricity generating projects owned by big cities, but located in remote rural counties, have significant negative impacts on the finances and social welfare of the host county. The disparity between large cities and rural areas with respect to financial and political power is profound, hence rural counties are greatly disadvantaged regarding compensation negotiations. Pend Oreille County (county) is in exactly this sort of disadvantaged position when it comes to receiving compensation from Seattle City Light (SCL). The presence of SCL facilities in the county are a great financial and social burden. Compensation payments from SCL make up approximately 10 percent of county revenues, yet the county has not received any payments since 2008. This has had significant negative impacts on school funding. Compensation offers from SCL have been far too low, which has resulted in the breakdown of negotiations. Under current law, the county has little or no leverage to obtain a new, equitable payment agreement. Seattle City Light should not be allowed to have discretionary power over the amount of compensation that should be paid. The provisions of the bill represent an important first step in giving the county greater power to negotiate fair and timely compensation agreements. Current law is vague and the bill would eliminate uncertainties regarding the compensation negotiation process. The statutes governing this process need to be amended so as to reduce the discretionary authority of SCL regarding compensation payments.

(Opposed) This bill is simply not necessary insofar as SCL has been doing its best to negotiate in good faith with the county. It should be recognized that the City of Seattle has economic problems that make it difficult to provide the level of compensation sought by the county. Seattle City Light has record of making generous payments to the county for many decades and is making every effort to continue to do so. While SCL recognizes the problems faced by the county, it must endeavor to reach an agreement that is also fair to the city and its ratepayers. The county has turned down a generous compensation offer and wants more than SCL can afford to give. Furthermore, the county already obtains benefits from the presence SCL facilities such as good paying jobs and cheap electric rates.

Staff Summary of Public Testimony (Ways & Means):

(In support) This bill is intended to address the negotiations between Seattle City Light (SCL) and Pend Oreille and Whatcom counties over the impact fees for hydroelectric facilities. Every 10 years the impact fees are negotiated, but the counties aren't on equal ground with the utility and thus end up having to accept whatever offer is proposed. In the 1980s the escalator in these agreements was about 5.7 percent and in the late 1980s and 1990s the escalator was about 4.7 percent. In the current offer the escalator is at about 2.7 percent. There has been no negotiation progress in the last year. Pend Oreille county has not received a payment since December 2008. If SCL was a private utility it would be paying about \$9 million in property tax, and if SCL was a public utility district it would pay a privilege tax of about \$6.5 million. In the last agreement the payment was about \$2.5 million between the two counties. There is concern about a level playing field between the county and the utility in arbitration and that is the reason for the bill.

(Opposed) Seattle City Light (SCL) is committed to resolving this issue with Pend Oreille county. Seattle City Light has had agreements with Pend Oreille county since 1962. There is currently an offer that amounts to \$15.5 million in payments over 10 years, which is an increase of 39 percent above the base payment from the previous 10 years. This proposal would put an onerous burden on the utility and rate payers. Depending on how the payment is calculated, the formulas in the bill could increase payments to Pend Oreille county by \$35 million more than the current offer. There is an agreement in place with Whatcom county. The current objective is to get an agreement locally with Pend Oreille county by the end of February. Payments have not been made since the last agreement ended in 2008. The city council can't make payments without a new agreement in place. This bill has long-term ramifications for all utilities that buy power from other areas of the state.

Persons Testifying (Local Government & Housing): (In support) Representative Kretz, prime sponsor; Laura Merrill, Pend Oreille County; and Nancy Lotze, Selkirk School District.

(Opposed) Tim Gugerty, City of Seattle; Jackie Kirn and Mike Haines, Seattle City Light; and Paul W. Locke.

Persons Testifying (Ways & Means): (In support) Representative Kretz, prime sponsor; and Paul Locke.

(Opposed) Rose Feliciano and Jorge Carrasco, Seattle City Light.

Persons Signed In To Testify But Not Testifying (Local Government & Housing): None.

Persons Signed In To Testify But Not Testifying (Ways & Means): None.